



September 28, 2001

Ms. Ruth H. Soucy  
Deputy General Counsel  
Comptroller of Public Accounts  
P.O. Box 13528  
Austin, Texas 78711-3528

OR2001-4354

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 152583.

The Comptroller of Public Accounts (the "comptroller") received a request for three categories of information:

1. A list of administrative hearing numbers for tax cases settled from January 1, 1999 through June 30, 2001;
2. A sum total of refunds awarded in those settled tax cases; and
3. A sum total of tax refunds awarded from January 2001 to the present.

You inform us that you have already released the information responsive to category 3 of the request. You claim that the remainder of the requested information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from required public disclosure information that is confidential by law. Section 111.006 of the Tax Code provides in part as follows:

- (a) The following matter is confidential and may not be used publicly, opened to public inspection, or disclosed except as permitted under Subsection (b) of this section:

(1) [federal tax return information; and ]

(2) all information secured, derived, or obtained by the comptroller or the attorney general during the course of an examination of the taxpayer's books, records, papers, officers, or employees, including an examination of the business affairs, operations, source of income, profits, losses, or expenditures of the taxpayer.<sup>1</sup> [Footnote added.]

*See also* Tax Code § 151.027(b) (making confidential identical information).

You contend that the information at issue identifies the taxpayer and/or consists of "information secured, derived, or obtained by the comptroller . . . during the course of an examination of the taxpayer's books[.]" We agree that you must withhold the administrative hearing numbers for the decisions, as they could serve to identify the taxpayers. *See* Attorney General Opinion H-223 (1974) (By de-identifying rulings and decisions, comptroller ensures that taxpayer's business operations are protected while the resolution of the tax issue, including the legal issues and fact findings, remains available to the public.) You also argue that the sum total of refunds awarded in the settled cases is confidential. *See A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 680 (Tex. 1995) (refund amounts are derived from taxpayer-furnished information and thus are confidential under section 111.006(a)(2)). However, while the individual refund amounts may have been obtained or derived from taxpayer information during the course of an examination, the sum total of those refunds is a number generated by the comptroller, and therefore is not confidential under section 111.006(a)(2). Further, we have no basis for concluding that the public release of this information, in this instance, would identify the taxpayers. Therefore, while you must withhold the administrative hearing numbers of the cases which were settled during the specified time period under section 552.101 in conjunction with section 111.006 of the Tax Code, you must release the sum total of refunds awarded in the cases which were settled.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

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<sup>1</sup> Subsection (b) of section 111.006 regarding the subpoena of confidential information in certain judicial or administrative proceedings is not applicable here.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in dark ink, appearing to read "Cindy Nettles", written over a horizontal line.

Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/seg

Ref: ID# 152583

Enc. Submitted documents

c: Mr. Brian Wallstin  
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(w/o enclosures)